House Select Committee on Economic Development

REPORT TO THE 2005
GENERAL ASSEMBLY OF NORTH CAROLINA
2006 REGULAR SESSION

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HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT
State Legislative Building
Raleigh, North Carolina 27603

May 9, 2006

TO THE MEMBERS OF THE 2006 GENERAL ASSEMBLY:

The House Select Committee on Economic Development submits to you for your consideration its report.

Respectfully Submitted,

Rep. James A. Harrell, III, Chair

2005-2006

HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT

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COMMITTEE PROCEEDINGS

The House Select Committee on Economic Development met four times after the adjournment of the 2005 General Assembly on September 2, 2005. Those meetings occurred on March 22, 2006, April 10, 2006, May 4, 2006, and May 9, 2006. For the first three meetings, the only matter reviewed by the Committee was the William S. Lee Quality Jobs and Business Expansion Act (Bill Lee Act) and proposed revisions to that act. At the meeting on March 22, 2006, the Committee heard an overview of the Bill Lee Act, how that Act had changed since its inception in 1996, the Department of Commerce's suggestions for revisions to the Act, and suggestions from local economic developers and other interested parties regarding revisions to the Act. At the meeting on April 10, 2006, Committee staff presented proposed legislation that would replace the Act with a new set of tax incentives. At the meeting on May 4, 2006, the Committee reviewed changes to the proposal that was discussed at the April 10 meeting. At the meeting on May 9, 2006, the committee discussed three new proposals dealing with an increase in the State minimum wage, capping the variable component of the motor fuels tax rate, and exempting fuel sold to manufacturers from various State taxes.

COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

The House Select Committee on Economic Development makes the following recommendations to the 2006 General Assembly. Each proposal is followed by an explanation of the proposal.

1. Bill Lee Changes.
2. Raise Minimum Wage.
3. Reduce and Cap Gas Tax.
4. Manufacturers Energy Tax Exemptions.

LEGISLATIVE PROPOSAL #1

BILL LEE CHANGES

LEGISLATIVE PROPOSAL #1

A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT
TO THE 2006 GENERAL ASSEMBLY

AN ACT TO REPLACE THE TAX CREDITS GENERALLY AVAILABLE UNDER THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT WITH MORE NARROWLY FOCUSED CREDITS FOR JOB CREATION AND BUSINESS INVESTMENT.

SHORT TITLE: Bill Lee Changes

SPONSORS: REPS. HARRELL, DAUGHTRIDGE, GIBSON, AND OWENS (PRIMARY SPONSORS); ENGLAND, GOFORTH, JONES, PARMON, AND RAY.

BRIEF OVERVIEW: This bill would create a new Article under Chapter 105 to provide tax credits to new and expanding businesses, effective for taxable years beginning on or after January 1, 2007; would sunset the Bill Lee Act for activities occurring on or after January 1, 2007, rather than January 1, 2008; and would make conforming changes to other statutes that refer to provisions of the Bill Lee Act.

EFFECTIVE DATE: This act would become effective January 1, 2007.

A copy of the proposed legislation and bill analysis begin on the next page

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

BILL DRAFT 2005-LYxz-286 [v.17] (1/31)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/28/2006 1:51:33 PM

Short Title: Bill Lee Changes. (Public)

Sponsors: Representative.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REPLACE THE TAX CREDITS GENERALLY AVAILABLE UNDER THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT WITH MORE NARROWLY FOCUSED CREDITS FOR JOB CREATION AND BUSINESS INVESTMENT.

The General Assembly of North Carolina enacts:

PART I. REPLACEMENT OF BILL LEE ACT

SECTION 1.1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 3H.

"Tax Credits for Growing Businesses.

"**§ 105-129.70. Legislative findings.**

The General Assembly finds that:

(1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.

(2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging; and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its

citizens, have been exacerbated in recent years by adverse national and State economic trends that contribute to the reduction in the State's industrial base and that inhibit the State's ability to sustain or attract new and expanding businesses.

(3) The economic condition of the State is not static and recent changes in the State's economic condition have created economic distress that requires a reevaluation of certain existing State programs and the enactment of a new program as provided in this Article that is designed to stimulate new economic activity and to create new jobs within the State.

(4) The enactment of this Article is necessary to stimulate the economy and create new jobs in North Carolina; and this Article will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the creation of new jobs, an enlargement of the overall tax base, an expansion and diversification of the State's industrial base, and an increase in revenue to the State and its political subdivisions.

(5) The purpose of this Article is to stimulate economic activity and to create new jobs within the State.

(6) The State is in need of a focused tax credit program that encourages and facilitates economic growth and development within the State.

(7) The resources of the State are not evenly distributed throughout the State and different communities have different abilities and needs in attracting and maintaining new and expanding business and industry.

"**§ 105-129.71. Definitions.**

The following definitions apply in this Article:

(1) Aircraft maintenance and repair. – The provision of specialized maintenance or repair services for commercial aircraft or the rebuilding of commercial aircraft.

(2) Air courier services. – The furnishing of air delivery of individually addressed letters and packages for compensation, in interstate commerce, except by the United States Postal Service.

(3) Business property. – Tangible personal property that is used in a business and capitalized under the Code.

(4) Company headquarters. – A corporate, subsidiary, or regional managing office, as defined by NAICS in United States industry 551114, that is responsible for strategic or organizational planning and decisionmaking for the business on an international, national or multistate regional basis.

(5) Cost. – In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

(6) Customer service call center. – The provision of support service by a business to its customers by telephone or other electronic means to support products or services of the business. For the purposes of this definition, an establishment is primarily engaged in providing support services by telephone or other electronic means only if at least sixty percent (60%) of its calls are incoming or at least sixty percent (60%) of its other electronic communications are initiated by its customers.

(7) Development tier. – The classification assigned to an area pursuant to G.S. 143B-437.08.

(8) Electronic shopping and mail order houses. – An industry in electronic shopping and mail order houses industry group 4541 as defined by NAICS.

(9) Establishment. – Defined in 29 C.F.R § 1904.46, as it existed on January 1, 2002.

(10) Full-time job. – A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(11) Hub. – Defined in G.S. 105-164.3.

(12) Information technology and services. – An industry in one of the following:

a. Internet service providers, Web search portals, and data processing subsector 518 as defined by NAICS.

b. Software publishers industry group 5112 as defined by NAICS.

c. Computer systems design and related services industry group 5415 as defined by NAICS.

(13) Reserved.

(14) Manufacturing. – An industry in manufacturing sectors 31 through 33, as defined by NAICS, but not including quick printing or retail bakeries.

(15) Motorsports facility. – A motorsports racetrack classified in the United States racetrack national industry 711212, as defined by NAICS.

(16) Motorsports racing team. – A professional racing team primarily engaged in the research and development, design, manufacture, repair, maintenance, and operation of motor vehicles used in live motorsports racing events before a paying audience.

(17) NAICS. – The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2002.

(18) New job. – A full-time job that represents a net increase in the number of the taxpayer's employees statewide. A new employee is an employee who holds a new job. The term does not include a job currently located in this State that is transferred to the business from a related member of the business.

(19) Overdue tax debt. – Defined in G.S. 105-243.1.

(20) Purchase. – Defined in section 179 of the Code.

(21) Related entity. – Defined in G.S. 105-130.7A.

(22) Research and development. – An industry in scientific research and development services industry group 5417 as defined by NAICS.

(23) Urban progress zone. – The classification assigned to an area pursuant to G.S. 143B-437.09.

(24) Warehousing. – An industry in warehousing and storage subsector 493 as defined by NAICS.

(25) Wholesale trade. – An industry in wholesale trade sector 42 as defined by NAICS.

"**§ 105-129.72. Sunset; studies.**

(a) Sunset. – This Article is repealed effective for business activities that occur on or after January 1, 2011.

(b) Equity Study. – The Department of Commerce shall study the effect of the tax incentives provided in this Article on tax equity. This study shall include the following:

(1) Reexamining the formula in G.S. 143B-437.08 used to define development tiers, to include consideration of alternative measures for more equitable treatment of counties in similar economic circumstances.

(2) Considering whether the assignment of tiers and the applicable thresholds are equitable for smaller counties.

(3) Compiling any available data on whether expanding North Carolina businesses receive fewer benefits than out-of-State businesses that locate to North Carolina.

(c) Impact Study. – The Department of Commerce shall study the effectiveness of the tax incentives provided in this Article. This study shall include:

(1) Studying the distribution of tax incentives across new and expanding businesses and industries.

(2) Examining data on economic recruitment for the period from 2005 through the most recent year for which data are available by county, by industry type, by size of investment, and by number of jobs, and other relevant information to determine the pattern of business locations and expansions before and after the enactment of this Article.

(3) Measuring the direct costs and benefits of the tax incentives.

(4) Compiling available information on the current use of incentives by other states and whether that use is increasing or declining.

(d) Report. – The Department of Commerce shall report the results of these studies and its recommendations to the General Assembly biennially with the first report due by June 1, 2009.

"**§ 105-129.73. Eligibility; forfeiture.**

(a) Eligible Business. – A taxpayer is eligible for a credit under this Article only with respect to activities occurring at an establishment whose primary activity is listed in this subsection. The primary activity of an establishment is determined based on the

establishment's principal product or group of products produced or distributed, or services rendered.

(1) Aircraft maintenance and repair.
(2) Air courier services hub.
(3) Company headquarters, but only if the additional eligibility requirements of subsection (b) of this section are satisfied.
(4) Customer service call centers.
(5) Electronic shopping and mail order houses.
(6) Information technology and services.
(7) Manufacturing.
(8) Motorsports facility.
(9) Motorsports racing team.
(10) Research and development.
(11) Warehousing.
(12) Wholesale trade.

(b) Company Headquarters Eligibility. – A taxpayer is eligible or a credit under this Article with respect to a company headquarters only if the taxpayer creates at least 75 new jobs at the company headquarters within a 12-month period. A taxpayer that meets this job creation requirement is eligible for credits under this Article with respect to the company headquarters for three taxable years beginning with the year in which the job creation requirement is satisfied. A taxpayer that creates an additional 75 new jobs at the company headquarters in a 12-month period during a three-year eligibility period does not qualify for any extended eligibility period. However, a taxpayer that creates an additional 75 new jobs at the company headquarters in a 12-month period after the completion of a three-year eligibility period is eligible for credits with respect to the company headquarters for an additional three taxable years beginning in the year in which the additional job creation requirement is satisfied.

(c) Wage Standard. – A taxpayer is eligible for a credit under this Article in a development tier two or three area only if the taxpayer satisfies a wage standard. The taxpayer is not required to satisfy a wage standard if the activity occurs in a development tier one area. Jobs that are located within an urban progress zone satisfy the wage if they pay an average weekly wage that is at least equal to ninety-five percent (95%) of the lesser of the average wage for all insured private employers in the State and the average wage for all insured private employers in the county. All other jobs satisfy the wage standard if they pay an average weekly wage that is at least equal to the lesser of one hundred ten percent (110%) of the average wage for all insured private employers in the State and ninety-five percent (95%) of the average wage for all insured private employers in the county. The Department of Commerce shall annually publish the wage standard for each county.

In making the wage calculation, the taxpayer shall include any jobs that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if those jobs are not filled at the time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer

shall use the wage standard for the calendar year in which the taxable year begins. Only full-time jobs are included when making the wage calculation.

(d) Health Insurance. – A taxpayer is eligible for a credit under this Article only if the taxpayer provides health insurance for all of the full-time jobs at the establishment with respect to which the credit is claimed when the taxpayer engages in the activity that qualifies for the credit. For the purposes of this subsection, a taxpayer provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a taxpayer claims a credit or carryforward of a credit allowed under this Article, the taxpayer shall provide with the tax return the taxpayer's certification that the taxpayer continues to provide health insurance for all the jobs at the establishment with respect to which the credit was claimed. If the taxpayer ceases to provide health insurance for the jobs during a taxable year, the credit expires and the taxpayer may not take any remaining installment or carryforward of the credit.

(e) Environmental Impact. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, at the time the taxpayer claims the credit, the taxpayer has no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources, and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last five years. A significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). The Secretary of Environment and Natural Resources shall notify the Department of Revenue annually of every person that currently has any of these pending actions and every person that has had any of these final determinations within the last five years.

(f) Safety and Health Programs. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, as of the time the taxpayer claims the credit, at the establishment with respect to which the credit is claimed, the taxpayer has no citations under the Occupational Safety and Health Act that have become a final order within the past three years for willful serious violations or for failing to abate serious violations. For the purposes of this subsection, 'serious violation' has the same meaning as in G.S. 95-127. The Commissioner of Labor shall notify the Department of Revenue annually of all employers who have had these citations become final orders within the past three years.

(g) Overdue Tax Debts. – A taxpayer is not eligible for a credit allowed under this Article if, at the time the taxpayer claims the credit or an installment or carryforward of the credit, the taxpayer has received a notice of an overdue tax debt and that overdue tax debt has not been satisfied or otherwise resolved.

(h) Expiration. – If, during the period that installments of a credit under this Article accrue, the taxpayer is no longer engaged in one of the types of business described in subsection (a) of this section, the credit expires. If, during the period that

installments of a credit under this Article accrue, the number of jobs of an eligible business falls below the minimum number required under subsection (a) of this section, any credit associated with that business expires. When a credit expires, the taxpayer may not take any remaining installments of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.74. A change in the development tier designation of the location of an establishment does not result in expiration of a credit under this Article.

(i) Forfeiture. – A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit for the calendar year in which the taxpayer engaged in the activity for which the credit was claimed. In addition, a taxpayer forfeits a credit for investment in real property under G.S. 105-129.79 if the taxpayer fails to timely create the number of required new jobs or to timely make the required level of investment required under G.S. 105-129.79(b). A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

(j) Change in Ownership of Business. – As used in this subsection, the term 'business' means a taxpayer or an establishment. The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a business, or any transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any credit or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if either of the following conditions is met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101, before it was acquired.

(3) The business was acquired by its employees directly or indirectly through an acquisition company under an employee stock option transaction or another similar mechanism. For the purpose of this subdivision, 'acquired' means that as part of the initial purchase of a business by the employees, the purchase included an agreement for the employees through the employee stock option transaction or another similar mechanism to obtain one of the following:

a. Ownership of more than fifty percent (50%) of the business.

b. Ownership of not less than forty percent (40%) of the business within seven years if the business has tangible assets with a net book value in excess of one hundred million dollars

($100,000,000) and has the majority of its operations located in an development tier one area.

(k) Advisory Ruling. – A taxpayer may request in writing from the Secretary of Revenue specific advice regarding eligibility for a credit under this Article. G.S. 105-264 governs the effect of this advice. A taxpayer may not legally rely upon advice offered by any other State or local government official or employee acting in an official capacity regarding eligibility for a credit under this Article.

(l) Planned Expansion. – A taxpayer that signs a letter of commitment with the Department of Commerce, after the Department has calculated the development tier designations for the next year but before the beginning of that year, to undertake specific activities at a specific site within the next two years may calculate the credit for which it qualifies based on the establishment's development tier designation and urban progress zone designation in the year in which the letter of commitment was signed by the taxpayer. If the taxpayer does not engage in the activities within the two-year period, the taxpayer does not qualify for the credit; however, if the taxpayer later engages in the activities, the taxpayer qualifies for the credit based on the development tier and urban progress zone designations in effect at that time.

"**§ 105-129.74. Tax election; cap; carryforwards; limitations.**

(a) Tax Election. – The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, and the gross premiums tax levied in Article 8B of this Chapter. The taxpayer may divide a credit between the taxes against which it is allowed. Carryforwards of a credit may be divided between the taxes against which it is allowed without regard to the original election regarding the division of the credit.

(b) Cap. – The credits allowed under this Article may not exceed fifty percent (50%) of the cumulative amount of taxes against which they may be claimed for the taxable year, reduced by the sum of all other credits allowed against those taxes, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article for the taxable year.

(c) Carryforward. – Unless a longer carryforward period applies, any unused portion of a credit allowed under G.S. 105-129.77 or G.S. 105-129.78 may be carried forward for five years and any unused portion of a credit allowed under G.S. 105-129.79 may be carried forward for 15 years. If the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease, and place in service in connection with an eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of business and real property, any unused portion of a credit under this Article with respect to the establishment that satisfies that condition may be carried forward for the succeeding 20 years. If the taxpayer does not make the required level of investment, the taxpayer shall apply the five-year carryforward period rather than the 20-year carryforward period.

(d) Statute of Limitations. – Notwithstanding Article 9 of this Chapter, a taxpayer shall claim a credit under this Article within six months after the date set by statute for the filing of the return, including any extensions of that date.

"§ 105-129.75. Fees and reports.

(a) Fee. – When filing a return for a taxable year in which the taxpayer engaged in activity for which the taxpayer is eligible for a credit under this Article, the taxpayer shall pay the Department of Revenue a fee of five hundred dollars ($500.00) for each type of credit the taxpayer claims or intends to claim with respect to an establishment. The fee is due at the time the return is due for the taxable year in which the taxpayer engaged in the activity for which the taxpayer is eligible for a credit. No credit is allowed under this Article for a taxable year until all outstanding fees have been paid. Fees collected under this section shall be credited to the General Fund.

(b) Reports. – The Department of Revenue shall publish by May 1 of each year the following information itemized by credit and by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of claims for each credit allowed in this Article.
(2) The number and development tier area of new jobs with respect to which credits were claimed.
(3) The cost and development tier area of business property with respect to which credits were claimed.
(4) The cost and development tier area of real property investment with respect to which credits were claimed.

"§ 105-129.76. Substantiation.

(a) Records. – To claim a credit allowed by this Article, the taxpayer shall provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

(b) Documentation. – Each taxpayer shall provide with the tax return qualifying information for each credit claimed under this Article. The qualifying information shall be in the form prescribed by the Secretary and shall be signed and affirmed by the individual who signs the taxpayer's tax return. The information required by this subsection is information demonstrating that the taxpayer has met the conditions for qualifying for a credit and any carryforwards, and includes the following:

(1) The physical location of the jobs and investment with respect to which the credit is claimed, including the street address and the development tier designation of the establishment.
(2) The type of business with respect to which the credit is claimed and the average weekly wage at the establishment with respect to which the credit is claimed.
(3) Any other qualifying information related to a specific credit allowed under this Article.

"§ 105-129.77. Credit for creating jobs.

<u>(a) Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.73 and satisfies the threshold requirement for new job creation in this State under subsection (b) of this section during the taxable year is allowed a credit for creating jobs. The amount of the credit for each new job created is set out in the table below and is based on the development tier designation of the county in which the job is located. If the job is located in an urban progress zone, the amount of the credit is increased by one thousand dollars ($1,000) per job. In addition, if a job located in an urban progress zone is filled by a resident of that zone, the amount of the credit is increased by an additional two thousand dollars ($2,000) per job.</u>

Area Development Tier	Amount of Credit
Tier One	$12,500
Tier Two	5,000
Tier Three	1,000

<u>(b) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier designation of the county where the new jobs are created during the taxable year. If the taxpayer creates new jobs at more than one eligible establishment in a county during the taxable year, the threshold applies to the aggregate number of new jobs created at all eligible establishments within the county during that year. If the taxpayer creates new jobs at eligible establishments in different counties during the taxable year, the threshold applies separately to the aggregate number of new jobs created at eligible establishments in each county. If the taxpayer creates new jobs in an urban progress zone, the applicable threshold is the one for a development tier one area.</u>

Area Development Tier	Threshold
Tier One	5
Tier Two	10
Tier Three	25

<u>(c) Calculation. – A job is located in a county or urban progress zone if more than fifty percent (50%) of the employee's duties are performed in the county or the zone. The number of new jobs a taxpayer creates during the taxable year is determined by subtracting the average number of full-time employees the taxpayer had in this State during the 12-month period preceding the beginning of the taxable year from the average number of full-time employees the taxpayer has in this State during the taxable year.</u>

<u>(d) Installments. – The credit may not be taken in the taxable year in which the new jobs are created. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the new jobs were created and is conditional upon the continued maintenance of those jobs by the taxpayer. If, in one of the four years in which the installment of a credit accrues, a job is no longer filled, the credit with respect to that job expires and the taxpayer may not take any remaining installment of the credit with respect to that job. If, in one of the years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the sum of the applicable threshold and the number of full-time employees the taxpayer had in the year before the year in which the taxpayer qualified for the credit,</u>

the credits with respect to all of the new jobs expire, and the taxpayer may not take any remaining installments of the credits. When a credit expires under this subsection, the taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.74.

(e) Transferred Jobs. – Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this section. Jobs that were located in this State and that are transferred to the taxpayer from a related member of the taxpayer are not considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a higher-numbered development tier or out of an urban progress zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the job was initially created in the area to which it was moved. If, in one of the years in which the installment of a credit accrues, the job with respect to which the credit was claimed is moved to an area in a lower-numbered development tier or an urban progress zone, the remaining installments of the credit shall be calculated as if the job had been created initially in the area to which it was moved.

(f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the wage standard requirement of G.S. 105-129.73 only if the taxpayer satisfies the requirement with respect to both the new jobs, considered collectively, for which a credit is claimed and all of the jobs at the establishment, considered collectively, with respect to which a credit is claimed.

(g) No Double Credit. – A taxpayer may not claim a credit under this section with respect to jobs for which a taxpayer claims a credit under G.S. 105-129.8.

"**§ 105-129.78. Credit for investing in business property.**

(a) General Credit. – A taxpayer that meets the eligibility requirements set out in G.S. 105-129.73 and that has purchased or leased business property and placed it in service in this State during the taxable year and that has satisfied the threshold requirements of subsection (c) of this section is allowed a credit equal to the applicable percentage of the excess of the eligible investment amount over the applicable threshhold. If the taxpayer places business property in service in an urban progress zone, the applicable percentage is the one for a development tier one area. Business property is eligible if it is not leased to another party. The credit may not be taken for the taxable year in which the business property is placed in service but shall be taken in equal installments over the four years following the taxable year in which it is placed in service. The applicable percentage is as follows:

Area Development Tier	**Applicable Percentage**
Tier One	7%
Tier Two	5%
Tier Three	4%

(b) Eligible Investment Amount. – The eligible investment amount is the lesser of (i) the cost of the eligible business property and (ii) the amount by which the cost of all of the taxpayer's eligible business property that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible business

property that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible business property in service in this State.

(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the development tier where the eligible business property is placed in service during the taxable year. If the taxpayer places business property in service in an urban progress zone, the applicable threshhold is the one for a development tier one area. If the taxpayer places eligible business property in service at more than one establishment in a county during the taxable year, the threshold applies to the aggregate amount of eligible business property placed in service during the taxable year at all establishments in the county. If the taxpayer places eligible business property in service at establishments in different counties, the threshold applies separately to the aggregate amount of eligible business property placed in service in each county.

Area Development Tier	**Threshold**
Tier One	$ -0-
Tier Two	1,000,000
Tier Three	4,000,000

(d) Expiration. – As used in this subsection, the term 'disposed of' means disposed of, taken out of service, or moved out of State. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is disposed of, the credit expires and the taxpayer may not take any remaining installment of the credit for that business property unless the cost of that business property is offset in the same taxable year by the taxpayer's new investment in eligible business property placed in service in the same county, as provided in this subsection. If, during the taxable year, the taxpayer disposed of the business property for which installments remain, there has been a net reduction in the cost of all the taxpayer's eligible business property that are in service in the same county as the business property that was disposed of, and the amount of this reduction is greater than twenty percent (20%) of the cost of the business property that was disposed of, then the credit for the business property that was disposed of expires. If the amount of the net reduction is equal to twenty percent (20%) or less of the cost of the business property that was disposed of, or if there is no net reduction, then the credit does not expire. In determining the amount of any net reduction during the taxable year, the cost of business property the taxpayer placed in service during the taxable year and for which the taxpayer claims a credit under Article 3A or Article 3B of this Chapter may not be included in the cost of all the taxpayer's eligible business property that is in service. If in a single taxable year business property with respect to two or more credits in the same county are disposed of, the net reduction in the cost of all the taxpayer's eligible business property that is in service in the same county is compared to the total cost of all the business property for which credits expired in order to determine whether the remaining installments of the credits are forfeited.

The expiration of a credit does not prevent the taxpayer from taking the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.74.

(e) Transferred Property. – If, in one of the four years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is moved to a county in a higher-numbered development tier or to an urban progress zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the business property had been placed in service initially in the area to which it was moved. If, in one of the four years in which the installment of a credit accrues, the business property with respect to which a credit was claimed is moved to a county in a lower-numbered development tier or an urban progress zone, the remaining installments of the credit shall be calculated as if the business property had been placed in service initially in the area to which it was moved.

(f) Wage Standard. – For the purposes of this section, a taxpayer satisfies the wage standard requirement of G.S. 105-129.73 only if the taxpayer satisfies the requirement with respect to all of the jobs at the establishment, considered collectively, with respect to which a credit is claimed.

(g) No Double Credit. – A taxpayer may not claim a credit under this section with respect to business property for which the taxpayer claims a credit under G.S. 105-129.9 or G.S. 105-129.9A.

"**§ 105-129.79. Credit for investment in real property.**

(a) Credit. – If a taxpayer that has purchased or leased real property in a development tier one area begins to use the property in an eligible business during the taxable year, the taxpayer is allowed a credit equal to thirty percent (30%) of the eligible investment amount if all of the eligibility requirements of G.S. 105-129.73 and of subsection (b) of this section are met. For the purposes of this section, property is located in a development tier one area if the area the property is located in was a development tier one area at the time the taxpayer made a written application for the determination required under subsection (b) of this section. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the real property the taxpayer is using in this State in an eligible business on the last day of the taxable year exceeds the cost of all of the real property the taxpayer was using in this State in an eligible business on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most real property in this State in an eligible business. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.71 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used by the taxpayer if the expenditures are not reimbursed or credited by the lessor. The entire credit may not be taken for the taxable year in which the property is first used in an eligible business but shall be taken in equal installments over the seven years following the taxable year in which the property is first used in an eligible business. When part of the property is first used in an eligible business in one year and part is first used in an eligible business in a later year, separate credits may be claimed for the amount of property first used in an eligible business in each year. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Determination by the Secretary of Commerce. – A taxpayer is eligible for the credit allowed under this section with respect to an establishment only if the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease and use in an eligible business at that establishment within a three-year period at least ten million dollars ($10,000,000) of real property and that the establishment that is the subject of the credit will create at least 200 new jobs within two years of the time that the property is first used in an eligible business. If the taxpayer fails to timely make the required level of investment or fails to timely create the required number of new jobs, the taxpayer forfeits the credit as provided in G.S. 105-129.73.

(c) Mixed Use Property. – If the taxpayer uses only part of the property in an eligible business, the amount of the credit allowed under this section is reduced by multiplying it by a fraction, the numerator of which is the square footage of the property used in an eligible business and the denominator of which is the total square footage of the property.

(d) Expiration. – If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used in an eligible business, the credit expires, and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used in an eligible business, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (c) of this section. If, in one of the years in which the installment of a credit accrues and by which the taxpayer is required to have created 200 new jobs at the property, the total number of employees the taxpayer employs at the property with respect to which the credit is claimed is less than 200, the credit expires, and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.74.

(e) No Double Credit. – A taxpayer may not claim a credit under this section with respect to real property for which a credit is claimed under G.S. 105-129.12 or G.S. 105-129.12A."

SECTION 1.2. Part 2 of Article 10 of Chapter 143B is amended by adding two new sections to read:

"**§ 143B-437.08. Development tier designation.**

(a) Tiers Defined. – A development tier one area is a county whose annual ranking is one of the 40 highest in the State. A development tier two area is a county whose annual ranking is one of the next 40 highest in the State. A development tier three area is a county that is not in a lower-numbered development tier.

(b) Development Factor. – Each year, on or before November 30, the Secretary of Commerce shall assign to each county in the State a development factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the most recent 12 months for which data are available.

(2) The county's rank in a ranking of counties by median household income from highest to lowest, for the most recent 12 months for which data are available.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest, for the most recent 36 months for which data are available.

(4) The county's rank in a ranking of counties by adjusted assessed property value per capita, from highest to lowest, for the most recent taxable year.

(c) Annual Ranking. – After computing the development factor as provided in this section and making the adjustments required in this section, the Secretary of Commerce shall rank all the counties within the State according to their development factor from highest to lowest. The Secretary shall then identify all the areas of the State by development tier and publish this information. A development tier designation is effective only for the calendar year following the designation.

(d) Data. – In measuring rates of unemployment and median household income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring assessed property value, the Secretary shall use the tax records prepared in each county. In measuring population and population growth, the Secretary shall use the most recent estimates of population certified by the State Budget Officer. For the purposes of this section, population statistics do not include people incarcerated in federal or State prisons.

(e) Exception for Certain Small Counties. – Regardless of the actual development factor, any county that has a population of less than 12,000 shall automatically be ranked one of the 40 highest counties, and any county that has a population of less than 50,000 shall automatically be ranked one of the 80 highest counties.

(f) Exception for Development Tier One Areas. – Regardless of the actual development factor, a county designated as a development tier one area shall automatically be ranked one of the 40 highest counties until it has been a development tier one area for at least two consecutive years.

(g) Exception for Two-County Industrial Park. – An eligible two-county industrial park has the lower development tier designation of the designations of the two counties in which it is located if it meets all of the following conditions:

(1) It is located in two contiguous counties, one of which has a lower development tier designation than the other.

(2) At least one-third of the park is located in the county with the lower tier designation.

(3) It is owned by the two counties or a joint agency of the counties.

(4) The county with the lower tier designation contributed at least the lesser of one-half of the cost of developing the park or a proportion of the cost of developing the park equal to the proportion of land in the park located in the county with the lower tier designation.

(h) Exception for Certain Multi-Jurisdictional Industrial Park. – An eligible industrial park created by interlocal agreement under G.S. 158-7.4 has the lowest development tier designation of the designations of the counties in which it is located if all of the following conditions are satisfied:

(1) The industrial park is located, at one or more sites, in four or more contiguous counties.

(2) At least two of the counties in which the industrial park is located are development tier one areas.

(3) The industrial park is owned by four or more units of local government or a nonprofit corporation owned or controlled by four or more units of local government.

(4) In each county in which the industrial park is located, the park has at least 300 developable acres. For the purposes of this subdivision, 'developable acres' includes acreage that is owned directly by the industrial park or its owners or that is the subject of a development agreement between the industrial park or its owners and a third-party owner.

(5) The total population of all of the counties in which the industrial park is located is less than 200,000.

(6) In each county in which the industrial park is located, at least sixteen and eight-tenths percent (16.8%) of the population was Medicaid eligible for the 2003-2004 fiscal year based on 2003 population estimates.

"**§ 143B-437.09. Urban progress zone designation.**

(a) Urban Progress Zone Defined. – An urban progress zone is an area comprised of one or more contiguous census tracts, census block groups, or both, or parts thereof, in the most recent federal decennial census that meets all conditions in this subsection.

(1) All land within the zone is located in whole within the primary corporate limits of a municipality with a population of more than 10,000 according to the most recent annual population estimates certified by the State Budget Officer.

(2) Every census tract and census block group that composes part of the zone meets at least one of the following conditions:

a. More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

b. At least seventy-five percent (75%) of its area is zoned as commercial and industrial and it is adjacent to a census tract or block group of which at least twenty percent (20%) of the population is below the poverty level

(3) The area of the zone zoned as commercial and industrial does not exceed thirty-five percent (35%) of the total area of the zone.

(4) The combined area of all zones in the municipality less the smallest census tract included in the zones does not exceed ten percent (10%) of the total area of the municipality in which the zones are located.

(5) No census tract or block group may be in more than one zone.

(b) Designation. – Upon request of a local government, the Secretary of Commerce shall make a written determination whether an area is an urban progress zone that meets the conditions of subsection (a) of this section. A determination under this section is effective until December 31 of the year following the year in which the determination is made. The Department of Commerce shall publish annually a list of all urban progress zones with a description of their boundaries.

(c) Parcel of Property Partially in Urban Progress Zone. – For the purposes of this section, a parcel of property that is located partially within an urban progress zone is considered entirely within the zone if all of the following conditions are satisfied:

(1) At least fifty percent (50%) of the parcel is located within the zone.

(2) The parcel was in existence and under common ownership prior to the most recent federal decennial census.

(3) The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary."

SECTION 1.3. G.S. 105-129.2A(a) reads as rewritten:

"(a) Sunset. – This Article is repealed effective for business activities that occur on or after January 1, ~~2008.~~2007."

SECTION 1.4. There is appropriated from the General Fund to the Department of Revenue the sum of one hundred twenty thousand dollars ($120,000) for the 2006-2007 fiscal year to perform functions related to the administration of Article 3H of Chapter 105 of the General Statutes. There is appropriated from the General Fund to the Department of Commerce the sum of forty thousand dollars ($40,000) for the 2006-2007 fiscal year to perform functions related to the administration of Article 3H of Chapter 105 of the General Statutes.

SECTION 1.5. Section 1.1 of this part is effective for taxable years beginning on or after January 1, 2007. The remainder of this part is effective when it becomes law.

PART II. CONFORMING CHANGES

SECTION 2.1. G.S. 105-129.55(a) reads as rewritten:

"(a) Qualified North Carolina Research Expenses. – A taxpayer that has qualified North Carolina research expenses for the taxable year is allowed a credit equal to a percentage of the expenses, determined as provided in this subsection. Only one credit is allowed under this subsection with respect to the same expenses. If more than one subdivision of this subsection applies to the same expenses, then the credit is equal to the higher percentage, not both percentages combined. If part of the taxpayer's qualified North Carolina research expenses qualifies under subdivision (2) of this subsection and

the remainder qualifies under subdivision (3) of this subsection, the applicable percentages apply separately to each part of the expenses.

(1) Small business. – If the taxpayer was a small business as of the last day of the taxable year, the applicable percentage is three percent (3%).

(2) Low-tier research. – For expenses with respect to research performed in ~~an enterprise tier one, two, or three~~a development tier one area, the applicable percentage is three percent (3%).

(3) Other research. – For expenses not covered under subdivision (1) or (2) of this subsection, the percentages provided in the table below apply to the taxpayer's qualified North Carolina research expenses during the taxable year at the following levels:

Expenses Over	**Up To**	**Rate**
-0-	$50 million	1%
$50 million	$200 million	2%
$200 million	–	3%"

SECTION 2.2. G.S. 105-164.14(h) reads as rewritten:

"(h) Low Enterprise or Development Tier Machinery. – Eligible taxpayers are allowed an annual refund of sales and use taxes paid under this Article as provided in this subsection.

(1) Refunds. – An eligible person is allowed an annual refund of sales and use taxes paid by it under this Article at the general rate of tax on eligible machinery and equipment it purchases for use in an enterprise tier one area or an enterprise tier two area, as defined in G.S. ~~105-129.3.~~105-129.3 or a development tier one area, as defined in G.S. 143B-437.08. Liability incurred indirectly by the taxpayer for sales and use taxes on these items is considered tax paid by the taxpayer. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.

(2) Eligibility. – A person is eligible for the refund provided in this subsection if it is engaged primarily in one of the businesses listed in G.S. 105-129.4(a) in an enterprise tier one area or an enterprise tier two area, as defined in G.S. ~~105-129.3.~~105-129.3 or if it is engaged primarily in one of the businesses listed in G.S. 105-129.73(a) in a development tier one area, as defined in G.S. 143B-437.08.

(3) Machinery and equipment. – For the purpose of this subsection, the term 'machinery and equipment' means engines, machinery, equipment, tools, and implements used or designed to be used in one of the businesses listed in G.S. ~~105-129.4(a).~~105-129.4(a) or 105-129.73(a). Machinery and equipment are eligible for the refund provided in this subsection if the taxpayer places them in service in an enterprise tier one area or an enterprise tier two area, as defined in G.S.

~~105-129.3,~~105-129.3, or a development tier one area, as defined in G.S. 143B-437.08, capitalizes them for tax purposes under the Code, and does not lease them to another party."

SECTION 2.3. G.S. 105-164.14(j)(2) reads as rewritten:

"(j) Certain Industrial Facilities. – The owner of an eligible facility is allowed an annual refund of sales and use taxes as provided in this subsection.

...

(2) Eligibility. – A facility is eligible under this subsection if it meets both of the following conditions:

a. It is primarily engaged in one of the industries listed in this subsection.

b. The Secretary of Commerce has certified that the owner of the facility will invest at least the required amount of private funds to construct the facility in this State. For the purpose of this subsection, costs of construction may include costs of acquiring and improving land for the facility and costs of equipment for the facility. If the facility is located in ~~an enterprise tier one, two, or three~~development tier one area as defined in ~~G.S. 105-129.3,~~G.S. 143B-437.08 the required amount is fifty million dollars ($50,000,000). For all other facilities, the required amount is one hundred million dollars ($100,000,000). In the case of a computer manufacturing facility, the owner may invest these funds either directly or indirectly through a related entity or strategic partner as those terms are defined in G.S. 105-129.61. In the case of a computer manufacturing facility, the term 'facility' has the same meaning as under G.S. 105-129.61."

SECTION 2.4. Reserved

SECTION 2.5. G.S. 143B-437.04 reads as rewritten:

"**§ 143B-437.04. Community development block grants.**

(a) The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants to ensure that:

(1) No local match is required for grants awarded for projects located in ~~enterprise~~ development tier one areas as defined in G.S. ~~105-129.3.~~143B-437.08.

(2) To the extent practicable, priority consideration for grants is given to projects located in ~~enterprise~~ development tier one areas as defined in G.S. ~~105-129.3~~143B-437.08 or in ~~development~~ urban progress zones that have met the conditions of subsection (b) of this section.

(b) In order to qualify for the benefits of this section, after an area is designated ~~a developmen~~tan urban progress zone under G.S. ~~105-129.3A,~~143B-437.09 the governing body of the city in which the zone is located must adopt a strategy to improve the zone and establish ~~a developmen~~tan urban progress zone committee to oversee the strategy.

The strategy and the committee must conform with requirements established by the Secretary of Commerce."

SECTION 2.6. G.S. 143B-437.51(5a) is recodified as G.S. 143B-437.51(4a) and reads as rewritten:

"(4a) ~~Enterprise~~ Development tier. – The classification assigned to an area pursuant to G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.7. G.S. 143B-437.53(a) reads as rewritten:

"(a) Minimum Number of Eligible Positions. – A business may apply to the Committee for a grant for any project that creates the minimum number of eligible positions as set out in the table below. If the project will be located in more than one ~~enterprise~~ development tier area, the location with the highest ~~enterprise~~ development tier area designation determines the minimum number of eligible positions that must be created.

~~Enterprise~~ Development Tier Area	Number of Eligible Positions
Tier One	10
Tier Two	~~10~~20
Tier Three	~~10~~20
~~Tier Four~~	~~20~~
~~Tier Five~~	~~20~~"

SECTION 2.8. G.S. 143B-437.55(c)(3) reads as rewritten:

"(c) Annual Reports. – The Committee shall publish a report on the Job Development Investment Grant Program on or before April 30 of each year. The report shall include the following:

…

(3) The number and ~~enterprise~~ development tier area of eligible positions created by projects with respect to which grants were awarded."

SECTION 2.9. G.S. 143B-437.56(d) reads as rewritten:

"(d) The percentage established in the agreement shall be reduced by one-fourth for any eligible position that is located in an ~~enterprise~~ development tier ~~four or five~~two or three area."

SECTION 2.10. G.S. 158-7.3(a) reads as rewritten:

"(a) Definitions. – The following definitions apply in this section:

(1) Development project. – A capital project that includes capital expenditures by both private persons and one or more units of local government and that increases net employment opportunities for residents of the development district or within a two-mile radius of the project, whichever is larger, and increases the local government tax base.

If the district in which such a project will occur is outside a city's central business district (as that district is defined by resolution of the city council, which definition is binding and conclusive), then, of the private development forecast for a development project by the development financing plan for the district in which the project will occur, a maximum of twenty percent (20%) of the plan's estimated

square footage of floor space may be proposed for use in retail sales, hotels, banking, and financial services offered directly to consumers, and other commercial uses other than office space. The twenty percent (20%) limitation in the preceding sentence does not apply to development financing districts located in ~~an enterprise~~ a development tier one area, as defined in G.S. ~~105-129.3,~~143B-437.08 and created primarily for tourism-related economic development, such as developments featuring facilities for exhibitions, athletic and cultural events, show and public gatherings, racing facilities, parks and recreation facilities, art galleries, museums, and art centers.

(2) Publish. – Insertion in a newspaper qualified under G.S. 1-597 to publish legal advertisements in the county or counties in which the unit is located.

(3) Unit or unit of local government. – A county, city, town, or incorporated village."

SECTION 2.11. G.S. 19A-64(c) reads as rewritten:

"(c) Distribution. – The Department shall make payments from the Spay/Neuter Account to eligible counties and cities who have made timely application for reimbursement within 30 days of the closing date for receipt of applications for that quarter. In the event that total requests for reimbursement exceed the amounts available in the Spay/Neuter Account for distribution, the monies available will be distributed as follows:

(1) Fifty percent (50%) of the monies available in the Spay/Neuter Account shall be reserved for reimbursement for eligible applicants within ~~enterprise tier one, two, and three~~development tier one areas as defined in G.S. ~~105-129.3.~~143B-437.08 The remaining fifty percent (50%) of the funds shall be used to fund reimbursement requests from eligible applicants in ~~enterprise tier four and five~~development tier two and three areas as defined in G.S. ~~105-129.3.~~143B-437.08.

(2) Among the eligible counties and cities in ~~enterprise tier one, two, and three~~development tier one areas, reimbursement shall be made to each eligible county or city in proportion to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year in that county or city as compared to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year by all of the eligible applicants in ~~enterprise tier one, two, or three~~development tier one areas.

(3) Among the eligible counties and cities in ~~enterprise tier four and five~~development tier two and three areas, reimbursement shall be made to each eligible county or city in proportion to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year in that county or city as compared to the number of dogs and cats that have received rabies vaccinations during the

preceding fiscal year by all of the eligible applicants in ~~enterprise tier four and five~~development tier two and three areas.

(4) Should funds remain available from the fifty percent (50%) of the Spay/Neuter Account designated for ~~enterprise tier one, two, or three~~development tier one areas after reimbursement of all claims by eligible applicants in those areas, the remaining funds shall be made available to reimburse eligible applicants in ~~enterprise tier four and five~~development tier two and three areas."

SECTION 2.12. G.S. 106-744(c2) reads as rewritten:

"(c2) A county that is ~~an enterprise tier four county or an enterprise tier five~~a development tier two or three county, as these tiers are defined in ~~G.S. 105-129.3(a),~~G.S. 143B-437.08, and that has prepared a countywide farmland protection plan shall match fifteen percent (15%) of the Trust Fund monies it receives with county funds. A county that has not prepared a countywide farmland protection plan shall match thirty percent (30%) of the Trust Fund monies it receives with county funds. A county that is ~~an enterprise tier one county, an enterprise tier two county, or an enterprise tier three county, as these counties are~~a development tier one county, as defined in ~~G.S. 105-129.3(a),~~G.S. 143B-437.08, and that has prepared a countywide farmland protection plan shall not be required to match any of the Trust Fund monies it receives with county funds."

SECTION 2.13. Reserved

SECTION 2.14. G.S. 146-22.3(d) reads as rewritten:

"(d) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.15. G.S. 146-22.4(c) reads as rewritten:

"(c) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.16. G.S. 146-22.5(b) reads as rewritten:

"(b) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.17. G.S. 153A-15.1 reads as rewritten:

"(e) Application. – This section applies only to land acquired in counties designated as ~~an enterprise tier one or enterprise tier two~~a development tier one area under G.S. ~~105-129.3.~~143B-437.08."

SECTION 2.18. G.S. 160A-425.1(c) reads as rewritten

"(c) If an inspector declares a residential building or nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of ~~a development zone under G.S. 105-129.3A,~~an urban progress zone under G.S. 143B-437.09, a 'nonresidential

redevelopment area' under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens."

SECTION 2.19. G.S. 160A-426(c) reads as rewritten:

(c) If an inspector declares a nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of ~~a development zone under G.S. 105-129.3A,~~an urban progress zone under G.S. 143B-437.09, a 'nonresidential redevelopment area' under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens."

SECTION 2.20. G.S. 105-129.51(a) reads as rewritten:

"(a) A taxpayer is eligible for the credit allowed in this Article if it satisfies the requirements of G.S. ~~105-129.4(b), (b2), (b3), and (b4)~~105-129.73(c), (d), (e), and (f) relating to wage standard, health insurance, environmental impact, and safety and health programs, respectively."

SECTION 2.21. G.S. 105-259(b) reads as rewritten:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

…

(24) To furnish the Department of Commerce and the Employment Security Commission a copy of the qualifying information required in G.S. ~~105-129.7(b).~~105-129.7(b) or 105-129.76(b).

…

(27) To publish the information required under G.S. 105-129.6, 105-129.19, 105-129.26, 105-129.38, 105-129.44, 105-129.65A, 105-129.75, 105-130.41, 105-130.45, 105-151.22, and 105-164.14.

…

(36) To furnish the Department of Commerce with the information needed to complete the studies required under G.S. 105-129.2A and G.S. 105-129.72."

SECTION 2.22. This part becomes effective January 1, 2007.

PART III. EFFECTIVE DATES.

SECTION 3.1. Except as otherwise provided, this act is effective when it becomes law.

Draft 2005-LYx-286
Bill Lee Changes

BILL ANALYSIS

Committee:	House Select Committee on Economic Development	**Date:**	April 28, 2006
Introduced by:		**Summary by:**	Y. Canaan Huie Committee Counse
Version:	Draft 2005-LYx-286 [v.17]		

SUMMARY: This bill would create a new Article under Chapter 105 to provide tax credits to new and expanding businesses, effective for taxable years beginning on or after January 1, 2007; would sunset the Bill Lee Act for activities occurring on or after January 1, 2007, rather than January 1, 2008; and would make conforming changes to other statutes that refer to provisions of the Bill Lee Act.

BILL ANALYSIS:

Part I. Tax Credits for Growing Businesses.

The William S. Lee Quality Jobs and Business Expansion Act (hereinafter Bill Lee Act) was enacted in 1996, effective beginning with the 1996 tax year with a 2002 sunset. The Act is a package of State tax incentives and has been modified in each subsequent year. The incentives are primarily in the form of tax credits for investment in machinery and equipment and real property, for job creation, and for worker training. Counties are divided into five enterprise tiers based on the unemployment rate, per capita income, and population growth of the county. For many of the credits, the lower the tier of a county, the more favorable the incentive. The Act requires the Department of Commerce and the Department of Revenue to report periodically on the credits allowed by the Act.

Before 1996, North Carolina had made little use of tax incentives to lure businesses to the State. Even without incentives, North Carolina was consistently one of the top states in attracting industry. The array of credits authorized by the Bill Lee Act was viewed as an experiment, to be evaluated in five years to determine whether the incentives were cost effective and actually affected behavior or merely provided tax reductions to businesses that would have located or expanded in any case. In 2000, the General Assembly extended the sunset on the act until January 1, 2006. In 2005, the General Assembly approved a two-year extension of the Act, until January 1, 2008, in order to provide additional time to study alternatives to the Act.[1]

[1] There are several exceptions to the 2008 sunset date. Interstate air couriers are eligible to claim the credits for business activity that occurs on or before January 1, 2010, provided that the interstate air courier entered into a real estate lease on or before January 1, 2006 with an airport authority that provides for the lease of at least 100 acres of land for a term of at least 15 years. "Eligible major industries" that qualify as such before January 1, 2006, are also allowed to claim credits for business activity that occurs on or before January 1, 2010. A taxpayer is an eligible major industry if it will invest at least $100 million in acquiring,

This bill would create a new package of State tax incentives to replace the Bill Lee Act for most taxpayers. These incentives would become effective January 1, 2007, and would expire January 1, 2011. Taxpayers that are eligible for the later repeal date of the Act would be able to choose to take credits under the current Act or under the proposed legislation. Many of the provisions of this proposed new Article are similar or identical to the provisions of the Bill Lee Act. There are some significant differences however.

General Administration.
Under this bill, by November 30 of each year, the Department of Commerce would be required to assign a tier designation to each of the 100 counties in the State. In order to make these assignments, the Department would rank all counties based on the following factors: unemployment, median household income, percentage population growth, and per capita adjusted assessed property value. Regardless of the development factor, any county with a population of less than 12,000 would automatically be included in the counties with the 40 highest rankings and any county with a population of less than 50,000 would automatically be included in the counties with the 80 highest rankings. Regardless of the development factor, a county designated as a tier one county would be included in the counties with the 40 highest rankings. The 40 counties with the highest ranking would be designated as development tier one, the next 40 highest counties would be designated as development tier two, and the remaining counties would be designated as development tier three.

This differs in several keys ways from the Bill Lee Act. First, the Bill Lee Act designation is not required until December 31. Second, in order to make the Bill Lee assignments, the Department of Commerce ranks all 100 counties based on the following three factors: unemployment, average per capita income, and percentage growth in population. The proposed legislation would substitute median household income for per capita income and add the new factor related to assessed property value per capita. Third, under the Bill Lee Act, counties are divided into five tiers rather than three. Fourth, under this proposal, the number of counties in a tier would be fixed. If one county received a lower tier designation because of the population or low-tier status exceptions, another county would be moved to a higher tier. Under the Bill Lee Act, the exceptions may move a county to a lower tier, but they do not result in any county being assigned to a higher tier.

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constructing, and equipping a facility and it is engaged in bioprocessing, the manufacture or distribution of pharmaceuticals or medicines, aircraft manufacturing, computer manufacturing, motor vehicle manufacturing, or semiconductor manufacturing. In addition, projects that are located in development zones are eligible for credits for business activities occurring before January 1, 2010, if all of the following conditions are met: before January 1, 2006, the taxpayer signs a letter of commitment with the Department of Commerce; the Secretary of Commerce makes a written determination that the taxpayer will invest $10 million and create at least 300 new jobs at the facility within a three-year period; and the taxpayer invests at least $4 million and creates at least 20 new jobs at the facility before January 1, 2006.

Development zones are another key feature of the Bill Lee Act. [2] Development zones were intended to be areas of high poverty within cities. Over the years, it has become clear that the development zones often include areas that are neither high-poverty nor particularly urban. This bill would replace development zones with urban progress (UP) zones. UP zones are more narrowly focused than development zones. First, an UP zone must be entirely within the corporate limits of a municipality with a population of at least 10,000. Development zones are located at least partially in a municipality with a population of at least 5,000. Second, UP zones must meet more stringent guidelines with respect to poverty within the zone. Third, the total area of all UP zones in a municipality, less the smallest census tract included in the zones, may comprise no more than 10% of the area of a municipality: there is no similar restriction on development zones.

Under this bill, all of the credits would be allowed against the franchise tax levied in Article 3 of Chapter 105, the income taxes levied in Article 4 of Chapter 105, the gross premiums tax levied in Article 8B of Chapter 105, or a combination of these taxes. The credits allowed under the Bill Lee Act are also allowed against these taxes; however, unlike this bill, under the Bill Lee Act, a taxpayer may take a credit against only one of the three taxes.

Under this bill, the total amount of credits allowed could not exceed 50% of the cumulative amount of the taxpayer's tax liability for franchise, income, and gross premiums taxes. Under the Bill Lee Act, the credits are limited to 50% of the taxpayer's tax liability for the one tax against which the taxpayer chooses to apply it. As with the Bill Lee Act, this cap would apply to the cumulative amount of credits for the current year and carryforwards of credits from previous years. Under this bill, any unused portion of a credit with respect to the credit for creating jobs or investing in business property could be carried forward for the succeeding five years. This is also the standard carryforward period for the Bill Lee Act. Any unused portion of a credit with respect to the credit for investing in real property could be carried forward for the succeeding 15 years, as compared to the succeeding 20 years under the Bill Lee Act. Finally, as with the Bill Lee Act, credits with respect to a large investment (at least $150 million) could be carried forward for 20 years. This draft would shorten the carryforward period for some credits and eliminates some enhanced carryforward provisions altogether.

When filing a return for a taxable year in which the taxpayer engaged in activity for which the taxpayer is eligible for a credit, the taxpayer would be required to submit a fee of $500 for each type of credit the taxpayer intended to claim with respect to an establishment. The fee would be deposited in the General Fund, and the positions at the

[2] Under the Bill Lee Act, the Department of Commerce is also responsible for designating development zones. Development zones are areas of higher poverty within urban centers. In order to be designated as a development zone, the area must satisfy all of the following conditions: every census tract or block group in the zone is located in a city with a population of at least 5,000, the zone has a population of at least 1,000, more than 20% of the population of the zone is below the poverty level, every census track or block group in the zone has more than 10% of its population below the poverty level or is immediately adjacent to a census tract or block group that has more than 20% of its population below the poverty level, and no census tract or block group in the zone is located in another development zone. Designation as a development zone is effective for two years. Location in a development zone leads to more favorable treatment for the taxpayer with respect to the wage standard, the credit for creating new jobs, the credit for investing in machinery and equipment, and the credit for worker training.

Departments of Revenue and Commerce that oversee the program would be funded through the General Fund. The Bill Lee Act contains a similar fee requirement, but under the Act the fees are kept by the Departments as departmental receipts: the positions that oversee the Bill Lee are funded by those receipts. Under the Bill Lee Act, there is a maximum fee of $1,500 per taxable year: there would be no maximum fee under the proposed new Article.

As under the Bill Lee Act, each taxpayer claiming a credit under the proposed new Article would be required to provide any information required by the Secretary of Revenue to evaluate the eligibility of the taxpayer for the credit claimed.

As under the Bill Lee Act, the Department of Revenue and the Department of Commerce would be required to make several reports on the proposed new Article. By each May 1, the Department of Revenue would be required publish information itemized by credit and by taxpayer relating to the amount and tier designation of new jobs, new real property investment, and new business property. The Department of Commerce would be required to make biennial reports on tax equity and the impact of the proposed new Article.

As with the Bill Lee Act, credits under the proposed new Article could not be taken more than six months after the deadline for filing the tax return (including extensions) on which they were claimed. This is more restrictive than is generally the case under North Carolina law. In general, an overpayment may be refunded only if the discovery is made or the written request for a refund made within 3 years of the date set by statutes for filing the return or within 6 months of the date of the overpayment, whichever is later.

Basic Eligibility

Type of Business. Under this bill, in order to be eligible for a credit under the proposed new Article, a taxpayer would be required to meet eligibility requirements with regards to type of business. Under the proposed new Article, business type would be determined solely by reference to the primary activity of the particular establishment.[3] The following types of businesses would be eligible for credits under the proposed new Article:

- Aircraft maintenance and repair.
- Air courier services hub.
- Corporate headquarters, but only if additional eligibility requirements are satisfied.
- Customer service call centers.
- Electronic shopping and mail order houses.
- Information technology and services.
- Manufacturing.
- Motorsports facilities.
- Motorsports racing teams.
- Research and development.
- Warehousing.

[3] The definition of "establishment" under the proposed new Article is different from the definition of "establishment" under the Bill Lee Act. Generally, under this definition, an establishment means a single physical location whereas the Bill Lee definition revolves around accounting units, although usually it refers to a single location as well.

- Wholesale trade.

Business-type eligibility under the proposed new Article would be substantially different than under the Bill Lee Act. Under the Bill Lee Act, business type eligibility depends on several factors including the primary business of the taxpayer as a whole, the primary activity of the particular establishment[4], the location of the establishment, and the number of new jobs created. The following types of business are eligible under the Bill Lee Act:

- Air courier services, if the primary business of the taxpayer is air courier services.
- Data processing, if the primary business of the taxpayer is data processing.
- Manufacturing, if the primary business of the taxpayer is manufacturing, warehousing, or wholesale trade and the primary activity of the establishment is manufacturing.
- Warehousing, if the primary business of the taxpayer is manufacturing, warehousing, or wholesale trade and the primary activity of the establishment is warehousing, or if the primary activity of an establishment is warehousing, the establishment is located in an enterprise tier 1-3 area, and the establishment serves 25 or more establishments of the taxpayer.
- Wholesale trade, if the primary business of the taxpayer is manufacturing, warehousing, or wholesale trade and the primary activity of the establishment is wholesale trade.
- Computer services, if the primary activity of the establishment is computer services.
- Electronic mail order house, if the primary activity of the establishment is an electronic mail order house and the electronic mail order house is located in an enterprise tier 1-3 area and creates at least 250 new jobs.
- Customer service center, if the primary business of the taxpayer is financial services or telecommunications, the primary activity of the establishment is a customer service center, and the center is located in an enterprise tier 1-3 area.
- Central office or aircraft facility, if the primary activity of the establishment is a central administrative office or a training or maintenance center for an interstate air passenger carrier and the establishment creates at least 40 new jobs.

Under the proposed new Article, motorsports facilities and motorsports racing teams would be eligible for credits whereas they are not currently eligible under the Bill Lee Act. A larger group of manufacturers, warehousers, wholesale traders, electronic mail order houses, and customer service centers would be eligible for credits under the proposed new Article than under the Bill Lee Act. Under the proposed new Article, credits for central administrative office facilities would be restricted to those facilities that are corporate headquarters and credits for data processing and computer services would be replaced by credits for information technology and services.

In order for a corporate headquarters to qualify for credits under the proposed legislation, the establishment would be required to create at least 75 new jobs within a 12-month

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[4] An "establishment" is defined by NAICS (North American Industry Classification System) as the smallest operating entity for which records provide information on the cost of resources – materials, labor, and capital – employed to produce the units of output. In the United States, an establishment is generally a single physical location; although there are many exceptions to this generality.

period. A taxpayer that satisfied this job creation requirement would be eligible for credits in the year in which the requirement was satisfied and the two succeeding years. A taxpayer that later created an additional 75 new jobs in a 12-month period could be eligible for an additional three-year period of eligibility, but only if the job creation occurred outside of any other period for eligibility.

Wage Standard. Under this bill, a taxpayer would be eligible for a credit under the proposed new Article only if the jobs provided by the taxpayer met a wage standard. As with the Bill Lee Act, no wage standard would apply in the lower-tiered areas.[5] For development tiers two and three, the jobs provided by the taxpayer would be required to pay at least the lower of 95% of the average county wage or 110% of the average State wage. This differs significantly from the manner in which the wage standard is calculated under the Bill Lee Act. Under the Bill Lee Act, for enterprise tier areas three through five, the jobs provided by the taxpayer must pay at least 110% of the applicable average weekly wage. The applicable average weekly wage of the county is the lowest of the following: the average weekly wage for all insured private employers in the county, the average weekly wage for all insured private employers in the State, and the average weekly wage for all insured private employers in the county multiplied by the county income/wage adjustment factor.[6] Under the proposed legislation, for activities that occur in UP zones, the wage standard is lower than for activities that occur in development tiers two and three outside of UP zones. For UP zones, the wage standard is 95% of the lesser of the average county wage and the average State wage. Under the Bill Lee Act, there is no wage standard for activities occurring in development zones.

Under the proposed new Article, the wage standard would be calculated in different ways for the credit for creating jobs and the credit for investing in business property. For the credit for creating jobs, the average weekly wage of the jobs for which the credit was claimed and the average weekly wage of all jobs at the establishment with respect to which the credit was claimed would be required to meet the relevant wage standard. For the credit for investing in business property, the average weekly wage of all jobs at the establishment with respect to which the credit was claimed must meet the relevant wage standard. This is equivalent to how the wage standard is applied under the Bill Lee Act for the credits for creating jobs and for investing in machinery and equipment. As with the Bill Lee Act, there would no wage standard for the credit for investing in real property under the proposed new Article since that credit would be available only in the lower-tiered counties where the wage standard requirement would not apply.

Under the Bill Lee Act, all jobs, including part-time jobs, must be included in the wage standard calculation. However, part-time jobs that also provide health insurance are considered to have an average weekly wage at least equal to the relevant wage standard. For the purpose of calculating the wage standard, the weekly wage of a part-time job is

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[5] Legislation enacted in 2002 eliminated the wage standard in enterprise tiers one and two under the Bill Lee Act. Under the proposed new Article, no wage standard would apply in development tier one. Development tier one under the proposed new Article is roughly equivalent to enterprise tiers one and two under the Bill Lee Act.

[6] The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The income/wage ratio is determined by dividing the average per capita income in the relevant jurisdiction by the annualized average wage for all insured private employers in the jurisdiction.

converted to a full-time equivalency. Under the proposed new Article, no part-time jobs would be included in the calculation of the wage standard. As under the Bill Lee Act, all jobs that were filled for at least 1600 hours during the year in which the taxpayer engaged in the activity for which a credit was claimed would be included in the wage standard calculation under the proposed new Article even if those jobs were not filled at the time the taxpayer claimed the credit.

Health insurance. As under the Bill Lee Act, a taxpayer would be required to provide health insurance for all full-time jobs at the establishment in order to be eligible for a credit under the proposed new Article. The taxpayer would be required to pay at least 50% of the premiums for health insurance that met at least the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee. Each year that a taxpayer claimed an installment or carryforward of a credit, the taxpayer would be required to provide certification that it continued to provide health insurance for all full-time employees. If the taxpayer ceased to provide health insurance, the credit would expire and the taxpayer would not be able to take any remaining installment or carryforward of the credit.

Environmental Impact. As under the Bill Lee Act, a taxpayer would be ineligible for a credit under the proposed new Article if the taxpayer had any pending administrative, civil, or criminal enforcement action based on alleged significant violation of any program implemented by an agency of the Department of Environment and Natural Resources or if the taxpayer had had any final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources in the last five years. The Secretary of Environment and Natural Resources would be required to notify the Department of Revenue of all persons who currently had any of these pending actions or who had had any of these final determinations in the past five years.

Safety and Health Programs. As under the Bill Lee Act, a taxpayer would be ineligible for a credit under the proposed new Article if the taxpayer had any outstanding violations under the Occupational Safety and Health Act that had become a final order for "willful serious" or "failure to abate serious" violations within the past three years. The Department of Labor would be required to notify the Department of Revenue of all employers who had had these citations become final orders in the past three years.

Overdue Tax Debts. As under the Bill Lee Act, a taxpayer would be ineligible for a credit under the proposed new Article if the taxpayer had any overdue tax debts. An overdue tax debt is any part of a tax debt that remains unpaid 90 days or more after a notice of final assessment was mailed to the taxpayer. A tax debt is a final assessment after all possibilities for appeal have been exhausted.

Under general existing law, if the Secretary of Revenue discovers that any tax is due from a taxpayer, the Secretary must notify the taxpayer in writing of the Secretary's intent to assess the taxpayer for the tax. The notice must describe the basis for the assessment, the amount of tax to be assessed, and any interest and penalties due. If the taxpayer disagrees with the assessment, the taxpayer has 30 days to request a hearing before the Secretary. The Secretary must then schedule a hearing to occur within 90 days of the request. Within 90 days after the hearing, the Secretary must issue a decision on the hearing. If

the taxpayer does not request a hearing within the 30 days allowed, or if the Secretary finds that the tax is due after the hearing, the proposed assessment becomes a final assessment. If a taxpayer disagrees with a final assessment, the taxpayer may appeal the decision to the Tax Review Board, and then on to superior court, the Court of Appeals, and the Supreme Court.

Expiration. Under the Bill Lee Act, credits may expire for several reasons. If the taxpayer is no longer engaged in an eligible type of business or if the number of jobs of an eligible business falls below the minimum number required, the credit expires. Generally, if a credit expires, the taxpayer may not continue to take installments of the credit, but may continue to take carryforwards of installments that accrued in previous years.[7] The credit for creating jobs and the credit for investing in machinery and equipment expire if the jobs are no longer filled or if the machinery and equipment are taken out of service used in an eligible business. The credit does not expire if the enterprise tier designation of an eligible taxpayer changes after the credit is first claimed. The credits under the proposed new Article retain these expiration provisions.

Forfeiture. Under the Bill Lee Act, a taxpayer forfeits a credit if the taxpayer was not eligible for the credit in the year in which the taxpayer engaged in the activity for which the credit was claimed. A taxpayer that forfeits a credit is liable for all past taxes avoided as a result of the credit plus interest. The past taxes and interest are due 30 days after the date the credit is forfeited. The credits under the proposed new Article would retain these forfeiture provisions.

Specific Credits.

Credit for creating jobs, G.S. 105-129.78. Under this bill, a taxpayer would be allowed a credit for creating new full-time jobs. In order to be eligible for this credit, the taxpayer would be required to meet a job creation threshold based on the development tier designation of the location where the jobs were created.[8] If the taxpayer created jobs in more than one county during a year, the threshold would apply separately to each county. If the taxpayer created jobs at more than one establishment in a single county during a year, the threshold would apply jointly to all establishments within the county. In addition, the amount of the credit would vary depending on the development tier designation of the area in which the job was located. A job would be located in an area if 50% or more of the employee's duties were performed in the area. The full amount of the credit could not be taken in the first year, but instead would be taken in four equal installments beginning with the taxable year following the year in which the employee was hired. Jobs transferred from one part of the State to another would not qualify for the credit. In addition, jobs transferred within the State from a related member of the taxpayer to the taxpayer would not qualify for the credit. The amount of the credit and the job creation threshold would be equal to the amounts in the following table based on the development tier area in which the job is located. In addition a job created in an UP zone would be eligible for an additional credit of $1,000 and if that job were filled by a resident of the zone it would be further increased by an additional $2,000.

Area Development Tier	Amount of Credit	Threshold

[7] Expiration of a credit because the taxpayer ceases to provide health insurance is an exception to this general rule. In that case, the taxpayer may not claim installments or carryforwards after the credit expires.

[8] For jobs created in an UP zone, the threshold applicable to development tier one would apply.

Tier One	$12,500	5
Tier Two	5,000	10
Tier Three	1,000	25

Under the proposed new Article, if in one of the four years in which the installment of a credit accrues, the jobs with respect to which the credit was taken were unfilled, the credit related to those specific jobs would expire and the taxpayer would not be allowed to take any remaining installments of the credit. If, in one of the four years in which the installment of a credit accrues, the total number of jobs fell below the sum of the applicable job creation threshold and the number of jobs existing in the year before the new jobs were created, the credits with respect to all the new jobs would expire and the taxpayer would not be allowed to take any remaining installments of the credits. If, in one of the four years in which an installment of the credit accrued, a job that qualified for the credit was subsequently transferred to another area, the remaining installments of the credit would be calculated as if the job had been initially located in the later area.

Under the proposed new Article, a taxpayer that planned to create new jobs in a specific area during the next two years could sign a letter of commitment with the Department of Commerce in order to lock-in the current year's development tier designations for the purposes of this credit. If the taxpayer created the jobs within the next two years, the taxpayer would be allowed to compute the amount of the credit based on the designations in effect in either the year in which the letter of commitment was signed or the year in which the jobs were created. If the taxpayer did not create the jobs in the next two years, the taxpayer could still claim a credit under the existing tier designation if the jobs were later created.

A taxpayer could not claim a credit under this proposed new Article and under the Bill Lee Act with respect to the same job. This is important because the Bill Lee Act will remain in effect for a limited group of taxpayers until 2010.

There are several significant differences between the proposed new credit for creating jobs and the credit that currently exists under the Bill Lee Act (G.S. 105-129.8). First, the Bill Lee Act credit does not require the taxpayer to meet a job creation threshold whereas the proposed new credit would. Second, the amount of the credit per job is more generous for some taxpayers under this proposed credit than under the existing Bill Lee Act credit.

Credit for investing in machinery and equipment, G.S. 105-129.79. Under this bill, a taxpayer would be allowed a credit for the amount by which the cost of the eligible investment amount of business property placed into service during a taxable year exceeds a threshold. The eligible investment amount is the lesser of (i) the cost of the eligible business property and (ii) the net increase in eligible business property over the base year (the year of the preceding three years in which the taxpayer had the largest amount of business property in service in the State). In order to be eligible for the credit, the taxpayer would be required to place new business property into service in excess of a threshold based on the development tier designation. The credit would be taken in four equal installments, beginning the year after the equipment was placed in service. The amount of the credit would be equal to a percentage of the eligible investment amount of the business property. If the taxpayer placed eligible business property into service in

more than one county during a year, the threshold would apply separately to each county. If the taxpayer placed eligible business property into service at more than one establishment in a single county during a year, the threshold would apply jointly to all establishments within the county. The following table sets out the relevant percentage and threshold for each development tier area:

Area Development Tier	Threshold	Credit Percentage
Tier One[9]	$ -0-	7%
Tier Two	1,000,000	5%
Tier Three	4,000,000	4%

If in one of the four years in which the installment of a credit would accrue, the business property with respect to which the credit was taken was disposed of, moved out of State, or taken out of service, the credit would expire and the taxpayer could not take any remaining installments of the credit unless the cost of that business property was offset in the same taxable year by the taxpayer's new investment in business property. If eligible business property that qualified for a credit was subsequently transferred to another area, the remaining installments of the credit would be calculated as if the business property had been initially located in the later area

A taxpayer that planned to place specific business property in service at a specific location within the next two years could sign a letter of commitment with the Department of Commerce in order to lock-in the current year's development tier designation for the purposes of this credit. If the taxpayer placed the eligible business property in service within the next two years, the taxpayer could compute the amount of the credit based on the designations in effect in either the year in which the letter of commitment was signed or the year in which the business property was placed in service. If the taxpayer did not place the business property in service in the next two years, the taxpayer could still claim a credit under the existing tier designation if the business property was later placed in service.

A taxpayer could not claim a credit under this proposed new Article and under the Bill Lee Act with respect to the same business property. This is important because the Bill Lee Act will remain in effect for a limited group of taxpayers until 2010.

There are significant differences between the proposed new credit for investing in business property and the credit currently allowed under the Bill Lee Act for investing in machinery and equipment. First, the thresholds under the proposed credit differ from the thresholds under the existing credit. Second, the definition of "business property" under the proposed new credit is broader than the definition of "machinery and equipment" under the existing credit. Third, the percentage that determines the amount of the credit under the proposed new credit differs from the percentage for the existing credit for some taxpayers. Fourth, the existing Bill Lee Act credit allows a taxpayer to satisfy the threshold requirement over a two-year period when property is being phased in over two years, whereas the proposed new credit would require the threshold requirement to be satisfied in each year.

[9] For the purposes of this credit, investment that occurs in an UP zone is subject to the threshold and percentage applicable to activity that occurs in a development tier one area.

Credit for substantial investment in other property, G.S. 105-129.79. Under this bill, a taxpayer that is located in a development tier one area would be eligible for a credit for investment in real property. In order for the taxpayer to claim this credit, the Secretary of Commerce would be required to make a written determination that the taxpayer was expected to invest at least $10 million in real property at a location within a three-year period and that the taxpayer would create at least 200 new jobs at the location within two years of the time that the property was first used in an eligible business. The taxpayer could begin to claim the credit once the property was first used in an eligible business. The amount of the credit would be equal to 30% of the eligible investment amount and could be taken in installments over a seven-year period. There would no ceiling on the amount of the credit. The credit for investment in real property would expire if the number of people employed at the location fell below 200.

A taxpayer could not claim both the proposed credit for investment in real property and either of the existing Bill Lee Act credits for investment in real property with respect to the same property. This is important because the Bill Lee Act will remain in effect for a limited group of taxpayers until 2010.

The only significant difference between the proposed credit for investment in real property and the Bill Lee Act credit for substantial investment in other property is the carryforward period. Under the Bill Lee Act, unused portions of the credit can be carried forward for up to 20 years. Under the proposed legislation, unused portions of the credit could be carried forward for up to 15 years.

Expiring credits. The Bill Lee Act contains five credits that do not have a counterpart in this bill. Those credits are as follows:

- *G.S. 105-129.9A. Technology commercialization credit.* The technology commercialization credit is essentially an enhanced version of the credit for investing in machinery and equipment for taxpayers that are making significant investments in certain types of machinery and equipment. There is no similar enhancement in the proposed new Article; however, the technology commercialization credit was designed with a specific project in mind that never came to fruition and therefore the credit has never been claimed.

- *G.S. 105-129.10. Credit for research and development.* The Bill Lee Act contains a credit for research and development expenditures. In 2004, the General Assembly created a new, stand-alone credit for research and development (See Article 3G of Chapter 105 of the General Statutes). Therefore, no similar credit is included in the proposed new Article.

- *G.S. 105-129.11. Credit for worker training.* The Bill Lee Act contains a credit with which a taxpayer could offset certain worker training expenses. There is no similar credit in the proposed new Article.

- *G.S. 105-129.12. Credit for investing in central office or aircraft facility property.* The Bill Lee Act contains a credit for investing in central office or aircraft facility property. The credit was equal to 7% of the eligible investment amount and was capped at $500,000. There is no similar credit in the proposed new Article though a business that would have been eligible for

this credit under the Bill Lee Act would be eligible for the proposed credit for investing in real property if the requirements of that proposed credit are satisfied.

- *G.S. 105-129.13. Credit for development zone projects.* This credit allowed a taxpayer to claim a credit equal to 25% of a donation to a development zone agency for an improvement project in a development zone. There is no similar credit in the proposed new Article.

Part II. Conforming Changes.

Part II of the proposed legislation would make a number of conforming changes to the statutes because of the changes that would be made under Part I of this proposal. Since the creation of the Bill Lee Act in 1996, many other programs have adopted the enterprise tier designation as a proxy for the economic viability or the available resources of a county. Many of these programs deal with economic development; but the tier structure has also been adopted as a proxy in such areas as animal control and wetlands mitigation. In addition, other programs refer to other aspects of the Bill Lee Act such as development zones or the wage standard. Because the Bill Lee Act would largely be replaced by the new Article in this proposal, the changes in Part II of this bill should help to lessen confusion that would be inherent in the use of two different tier systems. Because the tier structures are not equivalent, the changes in this Part will benefit some areas while reducing benefits to other areas. The changes are briefly summarized below.

- *Section 2.1.* This section would conform the credit for research and development expenses to the new tier structure. Under current law, the credit for research and development expenses is more generous if the research is conducted in an enterprise tier one, two, or three area. Under this proposal, research conducted in a development tier one area would be eligible for the more generous credit. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some taxpayers being eligible for a smaller credit.

- *Section 2.2.* This section would conform the sales and use tax refund for low enterprise tier machinery and equipment to the new tier structure. Under current law, a taxpayer is eligible for a refund of sales and use tax paid at the general rate on machinery and equipment put into service in enterprise tier one and two areas. This section adds a reference to development tier one. Because development tier one is expected to be roughly equivalent to, though including more counties than enterprise tiers one and two combined, this change should have limited effect.

- *Section 2.3.* This section would conform the sales and use tax refund on building materials for major eligible industrial facilities to the new tier structure. Under current law, a taxpayer must invest at least $50 million in an eligible facility in an enterprise tier one, two, or three area or $100 million in an eligible facility in an enterprise tier four or five area to be eligible for the refund. This section changes the requirement so that the $50 million threshold applies to facilities in development tier one and the $100 million threshold applies to facilities in tiers two and three. Because development tier one will

contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some taxpayers being ineligible for a refund.

- *Section 2.4.* Reserved.

- *Section 2.5.* This section would conform the guidelines adopted by the Department of Commerce relating to community development block grant funds to the new tier structure. Under current law, those guidelines must ensure that grants award in enterprise tier one areas do not require a local match and that priority is given to projects in enterprise tier one areas and development zones. This section would change those references to development tier one areas and UP zones. Because development tier one would be larger than enterprise tier one, this change would have the effect of increasing the number of projects which receive priority consideration and for which no local match is required. On the other hand, because UP zones are more restrictive than development zones, this change could have the effect of eliminating some projects from priority consideration.

- *Section 2.6.* This section changes a definitional reference under the JDIG statutes.

- *Section 2.7.* This section would conform the JDIG job creation requirements to the new tier structure. Under current law, a business must create at least 10 new jobs in an enterprise tier one, two, or three area or 20 new jobs in an enterprise tier four or five area to be eligible for consideration for JDIG. This section would change those requirements so that a business must create at least 10 new jobs in a development tier one area or 20 new jobs in a development tier two or three area to be eligible for consideration. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some taxpayers being ineligible for consideration for JDIG. However, as a practical matter, all businesses that have received JDIG grants have created far more jobs than the minimum required and it is therefore unlikely that this change would have any practical effect.

- *Section 2.8.* This section would conform a reference to tiers under the JDIG reporting requirements.

- *Section 2.9.* This section would conform the JDIG grant reduction requirements to the new tier structure. Under current law, a business that is located in an enterprise tier four or five area when the grant is awarded would have the amount of a grant reduced by 25%, with that reduction flowing to the Utility Account of the Industrial Development Fund rather than to the business. This section would change that reference so that it would apply in development tiers two and three. Because development tiers two and three combined would contain more counties than enterprise tiers four and five combined, this section could require a reduction in the grant amount for more businesses.

- *Section 2.10.* This section would conform a provision relating to tax increment financing to the new tier structure. This section would expand an exception created for financing districts related to tourism-related economic development projects. Under current law, this exception is allowed only in an enterprise tier one area. This section would allow that exception in a development tier one area. Because development tier one would contain more counties than enterprise tier one, this change would expand this exception.

- *Section 2.11.* This section would conform provisions dealing with the Spay/Neuter Account to the new tier structure. Under existing law, there is an account that helps offset the costs incurred by cities and counties for the spaying and neutering of animals. Fifty percent of the funds in the account are reserved for cities and counties in enterprise tiers one, two, and three. The remaining 50% is reserved for cities and counties in enterprise tiers four and five. If there are excess funds after all needs have been met in enterprise tier one, two and three areas, those funds are transferred and used in enterprise tier four and five areas. The funds designated for a group of tier areas are then allocated based on population. This section would change this breakdown so that the division would be between development tier one areas and development tier two and three areas. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some cities and counties getting more assistance and some cities and counties getting less assistance.

- *Section 2.12.* This section would conform a provision relating to agricultural easements and the Farmland Preservation Trust Fund to the new tier structure. Under current law, enterprise tier one, two, and three counties that have prepared countywide farmland protection plans are not required to match funds from the Farmland Preservation Trust Fund used to purchase agricultural easements. This section would change that reference to development tier one. Because development tier one will contain fewer counties than enterprise tiers one, two, and three combined, this change could result in some counties being newly subject to the match requirement.

- *Section 2.13.* Reserved.

- *Section 2.14 through Section 2.17.* These sections would conform provisions dealing with wetlands mitigation to the new tier structure. Under current law, when the State purchases land for wetlands mitigation it is required to make a payment in lieu of taxes to the county in which the land is located if the county is an enterprise tier one or two area. These sections would change those references to development tier one area. Because development tier one would have slightly more counties than enterprise tiers one and two combined, this change would require the State to make these payments in more instances.

- *Section 2.18 and Section 2.19.* These sections would conform provisions dealing with condemnation of unsafe buildings to the new tier structure. Under current law, cities have more flexibility in condemning nonresidential buildings as unsafe if the building is located in a "community development

target area". A community development target area is one that has characteristics of a development zone or similar characteristics. These sections would change the references from development zone to UP zone. Because of the amorphous nature of the definition of "community development target area", this change should not have any impact.

- *Section 2.20.* This section would conform eligibility requirements for the credit for research and development to the new Article. Under current law, in order to be eligible for that credit the taxpayer must satisfy the wage standard, health insurance, environmental impact and safety and health record requirements under the Bill Lee Act. This section would change the reference to those requirements under the new Article. This change could have the effect of making more taxpayers eligible for the credit because the wage standard requirement under the new Article is less strenuous than the requirement under the Bill Lee Act.

- *Section 2.21.* This section would amend the statutes relating to tax secrecy to ensure that the Department of Revenue could share information that is needed to administer the new Article with the Department of Commerce.

LEGISLATIVE PROPOSAL #2

RAISE MINIMUM WAGE

LEGISLATIVE PROPOSAL #2

A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT
TO THE 2006 GENERAL ASSEMBLY

AN ACT TO RAISE THE MINIMUM WAGE IN NORTH CAROLINA.

SHORT TITLE: Raise Minimum Wage

SPONSORS: REPS. HARRELL AND JONES (PRIMARY SPONSORS); ENGLAND, GIBSON, GOFORTH, OWENS, AND PARMON

BRIEF OVERVIEW: This bill would raise the minimum wage to $6.15 per hour effective January 1, 2007.

EFFECTIVE DATE: This act would become effective January 1, 2007.

A copy of the proposed legislation and bill analysis begin on the next page

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

BILL DRAFT 2005-LYz-325 [v.1] (5/4)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/4/2006 12:13:47 PM

Short Title:	Raise Minimum Wage.	(Public)
Sponsors:	Representative.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO RAISE THE MINIMUM WAGE IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-25.3(a) reads as rewritten:

"(a) Every employer shall pay to each employee who in any workweek performs any work, wages of at least ~~the minimum wage set forth in paragraph 1 of section 6(a) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage may change from time to time,~~six dollars and fifteen cents ($6.15) per hour, except as otherwise provided in this section."

SECTION 2. This act becomes effective January 1, 2007.

DRAFT 2005-LYz-325: Raise Minimum Wage

BILL ANALYSIS

Committee:	House Select Committee on Economic Development	**Date:**	May 4, 2006
Introduced by:		**Summary by:**	Y. Canaan Huie Committee Counsel
Version:	Draft 2005-LYz-325 [v.1]		

*SUMMARY: **This proposal would raise the minimum wage to $6.15 per hour effective January 1, 2007.***

BILL ANALYSIS: This proposal would increase the State minimum wage from $5.15 an hour to $6.15 an hour, effective January 1, 2007. Currently the State minimum wage is set at the same rate as the federal minimum wage. This proposal would amend the State minimum wage by deleting the provision that sets the State minimum wage at the same level as the federal minimum wage and substitute a minimum wage of $6.15. The General Assembly linked the State minimum wage to the federal minimum wage in 1997. The federal minimum wage amount has not changed since 1997.

H0325Draft-SMLY-LYz-325

LEGISLATIVE PROPOSAL #3

REDUCE AND CAP GAS TAX

LEGISLATIVE PROPOSAL #3

A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT

TO THE 2006 GENERAL ASSEMBLY

AN ACT TO REDUCE THE TAX ON MOTOR FUELS AND TO CAP THE VARIABLE COMPONENT OF THE RATE.

SHORT TITLE: Reduce and Cap Gas Tax

SPONSORS: **REPS. HARRELL AND GOFORTH (PRIMARY SPONSORS);** DAUGHTRIDGE, ENGLAND, AND RAY.

BRIEF OVERVIEW: This bill would reduce the motor fuels tax rate to 27.1 cents per gallon, the rate in effect for the period of July through December 2005, and cap the variable component of the rate so that the tax could not exceed this amount.

EFFECTIVE DATE: This act would become effective July 1, 2006.

A copy of the proposed legislation and bill analysis begin on the next page

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

BILL DRAFT 2005-LYz-327 [v.4] (5/4)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/8/2006 12:55:42 PM

Short Title:	Reduce and Cap Gas Tax.	(Public)
Sponsors:	Representative.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE TAX ON MOTOR FUELS AND TO CAP THE VARIABLE COMPONENT OF THE RATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-449.80(a) reads as rewritten:

"(a) Rate. – The motor fuel excise tax rate is a flat rate of seventeen and one-half cents (17 1/2¢)a gallon plus a variable wholesale component. The variable wholesale component is either three and one-half cents (3 1/2¢) a gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater. <u>In no case may the variable wholesale component be greater than nine and six-tenths cents (9.6¢) a gallon.</u>

The two base periods are six-month periods; one ends on September 30 and one ends on March 31. The Secretary must set the tax rate twice a year based on the wholesale price for each base period. A tax rate set by the Secretary using information for the base period that ends on September 30 applies to the six-month period that begins the following January 1. A tax rate set by the Secretary using information for the base period that ends on March 31 applies to the six-month period that begins the following July 1."

SECTION 2. This act becomes effective July 1, 2006.

DRAFT 2005-LYz-327: Reduce and Cap Gas Tax

BILL ANALYSIS

Committee:	House Select Committee on Economic Development	**Date:**	May 8, 2006
Introduced by:		**Summary by:**	Y. Canaan Huie
Version:	Draft 2005-LYz-327[v.4]		Committee Counse

SUMMARY: ***This draft would cap the variable component of the motor fuels tax rate at 9.6 cents per gallon effective July 1, 2006.***

CURRENT LAW: The motor fuel excise tax rate has two components: a flat rate and a variable rate. The flat rate is 17.5¢ per gallon. The variable component may change every six months. It is added to the flat rate. The variable component is equal to the greater of 3.5¢ a gallon or 7% of the weighted average wholesale price of gasoline and No. 2 diesel fuel for the most recent six-month base period. The base period is the six-month period that ends three months before the taxing period. The current motor fuel tax rate is 29.9¢ a gallon. Due to increases in the weighted wholesale price of these motor fuels, the tax has increased during each of the last seven six-month periods and is now at its highest point ever.

One-half cent a gallon of the motor fuel tax revenue is dedicated to the two underground storage tank funds and the water and air quality account. Seventy-five percent (75%) of the remainder of the revenue generated by this tax is allocated to the Highway Fund and the remaining 25% is credited to the Highway Trust Fund.

BILL ANALYSIS: This proposal would cap the variable component of the motor fuels tax rate at 9.6¢ per gallon. The variable component is currently 12.4¢ per gallon.

H0327rpt-SMLY-LYz-327v4

LEGISLATIVE PROPOSAL #4

MANUFACTURERS ENERGY TAX EXEMPTIONS

LEGISLATIVE PROPOSAL #4

A RECOMMENDATION OF THE HOUSE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT
TO THE 2006 GENERAL ASSEMBLY

AN ACT TO EXEMPT FUEL SOLD TO MANUFACTURERS FROM THE SALES AND USE TAX, THE EXCISE TAX ON PIPED NATURAL GAS, AND THE EXCISE TAX ON MANUFACTURING FUEL AND CERTAIN MACHINERY AND EQUIPMENT.

SHORT TITLE: Manufacturers Energy Tax Exemptions

SPONSORS: REPS. PARMON; DAUGHTRIDGE, ENGLAND, GIBSON, GOFORTH, HARRELL, JONES, OWENS, AND RAY.

BRIEF OVERVIEW: This proposal would exempt from taxes electricity, piped natural gas, and other fuel sold to a manufacturer for use in the operation of the manufacturing facility.

EFFECTIVE DATE: This act would become effective January 1, 2007.

A copy of the proposed legislation and bill analysis begin on the next page

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE DRH50546-LYz-330 (5/8)

Short Title:	Manufacturers Energy Tax Exemptions.	(Public)
Sponsors:	Representatives Parmon; Daughtridge, England, Gibson, Goforth, Harrell, Jones, Owens, and Ray.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FUEL SOLD TO MANUFACTURERS FROM THE SALES AND USE TAX, THE EXCISE TAX ON PIPED NATURAL GAS, AND THE EXCISE TAX ON MANUFACTURING FUEL AND CERTAIN MACHINERY AND EQUIPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.4(1f)b. is repealed.

SECTION 2. G.S. 105-164.4(1h) is repealed.

SECTION 3. G.S. 105-164.13 is amended by adding a new subdivision to read:

"§ **105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property and services are specifically exempted from the tax imposed by this Article:

…

(54) Fuel, including electricity, sold to a manufacturer for use in connection with the operation of the manufacturing facility."

SECTION 4. G.S. 105-187.41(c) reads as rewritten:

"(c) ~~Gas City Exemption.~~Exemptions. – The tax imposed by this section does not apply to ~~piped~~ the following:

(1) Piped natural gas received by a gas city for consumption by that ~~city or to piped~~city.

(2) Piped natural gas delivered by a gas city to a sales or transportation customer of the gas city.

(3) Piped natural gas received by a manufacturer for use in connection with the operation of the manufacturing facility."

SECTION 5. G.S. 105-187.51A is repealed.

SECTION 6. This act becomes effective July 1, 2006. Sections 1 through 3 of this act apply to sales made on or after that date, Section 4of this act applies to deliveries made on or after that date, and Section 5 applies to purchases made on or after that date.

BILL ANALYSIS

DRAFT 2005-LY-330:
Tax Exemption on Electricity - Manufacturers

Committee:	House Select Committee on Economic Development	**Date:**	May 8, 2006
Introduced by:		**Summary by:**	Y. Canaan Huie Committee Counsel
Version:	2005-LY-330[v.2]		

SUMMARY: This proposal would exempt from taxes electricity, piped natural gas, and other fuel sold to a manufacturer for use in the operation of the manufacturing facility.

CURRENT LAW: Generally, electricity that is sold to a manufacturer for use at a manufacturing facility and is separately metered or measured is subject to the sales and use tax at a rate of 2.83%. Most other sales of electricity are taxed at the rate of 3%. In 2001, the General Assembly reduced to 0.17% the sales tax rate on electricity sold to manufacturers that use more than 900,000 megawatt-hours of electricity annually, effective January 1, 2002. In 2004, the reduced rate for those manufacturers using more than 900,000 megawatt-hours of electricity annual was replaced by a provision that allows that lower tax rate for electricity sold to an aluminum smelting facility for use in connection with the operation of that facility and measured by a separate meter or measuring device would be taxable at 0.17%. The provision establishing the lower rate for an aluminum smelting facility sunsets for sales made on or after October 1, 2007. At the time the 2004 legislation was enacted, the State did not have an aluminum smelting facility.

North Carolina exempts sales of piped natural gas from the sales and use taxes. In place of the sales and use tax, most sales of piped natural gas are subject to an excise tax measured by the therm[10] of gas delivered.

Fuel other than electricity or piped natural gas that is sold to a manufacturer is subject to an excise tax of 1% of the cost of the fuel

BILL ANALYSIS: This proposal would exempt from the sales and use taxes electricity and other fuel sold to a manufacturer for use in the manufacturing process. The proposal would also exempt from taxation piped natural gas sold to a manufacturer. Finally, this proposal would repeal the 1% excise tax on fuel sold to a manufacturer.

EFFECTIVE DATE: This proposal would become effective July 1, 2006.

H0330e2-SMLY-LYz-330

[10] A therm is a unit of energy equal to 100,000 BTU. At normal pressure, this is equal to about 100 cubic feet of natural gas.